and so cannot be deemed to have had a contract made outside the state in mind as a part of their suretyship. *Minneapolis Fire & Marine Mut. Ins. Co.* v. *Norman*, 74 Ark. 190; PINGREY, SURETYSHIP, 67. The case seems decided on the better principle, as the purpose of the penalizing statute is collateral to the purpose which is sought to be accomplished by the requiring of a surety, and the other interpretation would seem to be an inequitable ingraftment on the statute which provides for the surety.

INSURANCE—WAIVER OF PROVISIONS IN APPLICATION BY AGENT.—An agent of defendant insurance company visited the plaintiff and attempted to induce her to have her husband's life insured. On learning that the family had no money he stated that she could pay the premium by paying $1 per week and that her husband would be insured from the time of the first payment. In accordance with this agreement, the husband signed a written application for insurance which stated that the insurance should not begin until the first premium was paid, and also that the agent had no power to waive any condition contained in the application. The agent received the policy and collected the first payment of $1, and insured died before another payment was made. In an action on the policy, *held*, that the agent did not waive the condition which was precedent to the insurance taking effect. *Lasch* v. *New York Life Ins. Co.* (1915), 155 N. Y. Supp. 255.

The New York courts have held with but one exception (*Russell* v. *Prudential Ins. Co.*, 176 N. Y. 178) that the agent may waive a breach of condition at the inception of the policy, where the policy is delivered with the knowledge of the breach of condition, despite the provision in the contract against such a waiver. *Stewart* v. *Union M. L. Ins. Co.*, 155 N. Y. 257; *Ames v. Manhattan Life Ins. Co.*, 40 App. Div. 465, affirmed in 167 N. Y. 584; *Benjamin* v. *Palatine Ins. Co.*, 80 App. Div. 260, affirmed in 177 N. Y. 588. The *Russell* case holds that such a condition may not be waived, as the applicant is charged with knowledge of the contents of the application, and so knew that the policy could not take effect until the premium was paid. The legal effect of the application being a covenant between the applicant and insurer directly and not through the agent, the contract is to be enforced as clearly written. The principal case follows the reasoning of the *Russell* case and is in accord with the great weight of authority. *Northern Assur. Co.* v. *Grand View Bldg. Assn.*, 183 U. S. 308. The court attempts to distinguish the principal case from those holding the contrary doctrine by pointing out the difference in the lapse of time between the first payment and the death of insured, but the distinction seems unimportant inasmuch as the cases say that the basis of the rule is the prevention of fraud (*Wood* v. *Am. Fire Ins. Co.*, 149 N. Y., 382) and prompt action on the part of the company would be necessary in any event to prevent fraud, so that the case may be looked at as showing a tendency of the New York court to abandon the peculiar doctrine as to waiver of condition at the inception of the contract, and to follow the generally accepted doctrine.

JUDGMENT—LIEN SUPERIOR TO UNRECORDED DEED.—W conveyed land to plaintiff by deed; subsequent to the delivery of the deed, but prior to the

time that it was registered, defendant obtained and docketed a judgment against W. *Held,* under Revisal 1905, § 980, providing that no conveyance shall be valid to pass any property, as against creditors or purchasers for a valuable consideration, but from the registration thereof, judgment so docketed against the grantor was a superior lien on the land. *Maxton Realty Co.* v. *Carter et al.* (N. C. 1915), 86 S. E. 714.

By the rules of the common law, a judgment creditor was not regarded as a purchaser for value because the judgment creditor does not lend his money upon the immediate view or contemplation of cognizor's real estate. *Brace* v. *Marlborough,* 2 P. Wms. 491. Unless this construction has been changed by statute, the same rule would obtain. *Rodgers* v. *Gibson,* 4 Yeates (Pa.) 111. "It is the *property* of the *debtor,* which is bound by the attachment from the time of service, and not the property of another. * * * If he has no interest, legal or equitable, there is nothing upon which the judgment can rest; nothing to which the lien can attach. * * * The ordinary purchaser pays a new consideration. Not so with the judgment creditor. Such creditor comes in *under* the debtor, and not, as does the purchaser, *through* him. The consequence is that the creditor is entitled to the same rights as the *debtor* had, and no more." *Norton* v. *Williams,* 9 Iowa 528, 531. In some states, by statute, a judgment lien has priority over an unrecorded deed or mortgage, of which the judgment creditor had no notice at the time his lien attached. *McCoy* v. *Rhodes,* 11 How. 131; *Humphreys* v. *Merrill,* 52 Miss. 92; *Massey* v. *Westcott,* 40 Ill. 160; DEVLIN, REAL ESTATE, § 635; 4 MICH. L. REV. 664. If the deed is not recorded "until after a judgment is rendered against the vendor, the subsequent registration of the deed does not relate back so as to defeat the lien of the judgment, but the statute avoids this deed in favor of the judgment creditor who has no notice of such deed, either actual or constructive, at or before the rendition of such judgment." *Pollard* v. *Cocke,* 19 Ala. 188. These statutory modifications are justified when we consider the development of our commercial and industrial world. "The policy of the statute is to make void secret sales and conveyances by debtors, whereby purchasers and creditors without notice would be deceived and injured. As to them, the statute treats the title as still remaining in the grantor, and as passing by the subsequent conveyance or liable to creditors. * * * The law imposes the duty upon a purchaser to spread his muniments of title upon the public records, so that it may be known that he is owner. If he fails to do that he takes the risk of a subsequent sale, for value, of the property by his vendor, or of its subjection to his debts; nor can he prevail against such purchaser or creditor unless he can charge the purchaser or creditor with notice of his prior right." Simrall, C. J., in *Humphrey* v. *Merrill,* supra, at page 94.

JUDGMENT—REVIVAL BY SCIRE FACIAS.—A judgment more than twenty years old was revived on *scire facias* on order of an Illinois court. The revived judgment was sued on in California. *Held,* the action is not barred by the Code of Civil Procedure, § 336, providing that actions on decrees of